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WAIVER - EXPEDITED ACTION REQUESTED

September 20, 2010

James Arden Barnett, Jr., Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Julius Knapp, Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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Federal Communications Commission
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Federal Communications Commission
Office of the Secretary

Re: Thales Communications, Inc.
Liberty™ Multiband Land Mobile Radio – FCC ID: OKC-4102023501

Request for Limited Waiver of Commission Rules to Permit Temporary
Extension of Equipment Authorization to Include 775-776 MHz/805-806 MHz
and Related Relief

Expedited Action Requested

Dear Messrs. Barnett and Knapp:

Thales Communications, Inc. ("Thales"), by undersigned counsel and pursuant to 47 CFR §1.925, hereby requests expedited issuance of a very limited waiver of Sections 2.106 and 90.531(b) of the Commission's rules¹ with regard to Thales' Liberty™ Multiband Land Mobile Radio (the "Thales Liberty™ Radio"). Specifically, and as discussed in greater detail herein, waiver of Sections 2.106 and 90.531(b), and any other relief as may be necessary and proper, is requested to:

- Permit the temporary extension of the authorized Part 90 frequencies specified on the Thales Liberty™ Radio equipment authorization (the "Thales Equipment Authorization") to include 775-776 MHz and 805-806 MHz.

¹ 47 CFR §§2.106, 90.531(b).

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- Permit the Thales Liberty™ Radio (with the extended and authorized 775-776 MHz and 805-806 MHz frequencies) to be marketed to and purchased by all eligible Public Safety licensees that have been or will be granted waivers to temporarily operate on such frequencies ("Waiver Licensees"), for the limited duration of their waivers.
- Permit the Waiver Licensees to use the Thales Liberty™ Radio on 775-776 MHz/805-806 MHz for the limited duration of their waivers, after which operation of the Thales Liberty™ Radio would be limited to those frequencies currently authorized by the Commission.

In support of this request, the following is respectfully shown:

I. Background

A. Prohibition of New Narrowband Operations in 775-776 MHz/805-806 MHz

In the Commission's July 31, 2007 *Second Report and Order* in PS Docket No. 06-229 and WT-Docket No. 96-86,² the Commission redesignated ten megahertz of public safety 700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network. In so doing, the Commission consolidated the public safety narrowband channels to 769-775/799-805 MHz³ and prohibited – as of August 30, 2007 - new narrowband operations in 775-776 MHz and 805-806 MHz and other previously authorized frequencies.⁴ In addition, the *Second Report and Order* required existing operations in 775-776 MHz and 805-806 MHz and other frequencies to be relocated to the new consolidated narrowband segment by the DTV transition deadline of February 17, 2009.⁵

B. Waivers Permitting Temporary Operations On 775-776 MHz/805-806 MHz

In a series of Orders issued by the Commission starting in November 2007, the Commission has permitted limited waiver relief to certain eligible public safety entities that have

² Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No.06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd. 15289 (2007) ("*Second Report and Order*").

³ *Id.* at ¶329.

⁴ *Id.* at ¶339.

⁵ *Id.* at ¶332.

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demonstrated that for reasons of public safety continued operation on 775-776 MHz/805-806 MHz on an interim basis is in the public interest.⁶ Such waivers have been granted to prevent “hardship or delay [of] systems needed to protect the safety of life and property” where evidence has been presented of a comprehensive deployment plan prior to August 30, 2007.⁷ To date, these Waiver Orders have permitted continued operation on 775-776 MHz/805-806 MHz only with respect to reported equipment that had already been received by the licensee as of August 30, 2007 or that “was already on order and planned for deployment.”⁸ The duration of the waiver relief afforded under the Waiver Orders has not yet been determined by the Commission.

C. Stay of February 17, 2009 Deadline for Narrowband Consolidation

By Order dated February 12, 2009, the Commission stayed on its own motion the February 17, 2009 deadline for consolidating existing narrowband allocations to the new consolidated narrowband segment.⁹ Such stay was issued because “the predicate assumptions for establishing February 17, 2009 as the narrowband relocation deadline [had] not materialized.”¹⁰

⁶ Thales is aware of ten (10) Orders issued by the Commission authorizing the temporary operation of 775-776 MHz/805-806 MHz (i.e., Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, Order, FCC 07-195 (rel. Nov. 14, 2007) (“*Virginia Order*”); *id.*, DA 08-123 (rel. Jan. 17, 2008) (“*Pierce Transit Order*”); *id.*, DA 08-1463 (rel. June 20, 2008) (“*New York Order*”); *id.*, DA 08-1697 (rel. July 18, 2008) (“*Arkansas Order*”); *id.*, DA 08-1696 (rel. July 18, 2008) (“*Illinois Order*”); *id.*, DA 08-1746 (rel. July 25, 2008) (“*Hawaii Order*”); *id.*, DA 08-1745 (rel. July 25, 2008) (“*Mississippi Order*”); *id.*, DA 08-2520 (rel. Nov. 14, 2008) (“*Phoenix, Arizona Order*”); *id.*, DA 08-2519 (rel. Nov. 14, 2008) (“*Ada County, Idaho Order*”); *id.*, DA 08-2518 (rel. Nov. 14, 2008) (“*Harris County, Texas Order*”)). These Orders, as well as any other similar Orders that have and may in the future be granted for other licensees, are collectively referred to as the “Waiver Orders”. The Public Safety licensees that are currently and may in the future be subject to the Waiver Orders are collectively referred to as the “Waiver Licensees”.

⁷ See *Virginia Order*, at ¶7.

⁸ See E-Mail dated June 1, 2010, from Tim Harrington, FCC to Sid Sanders (re: FCC ID: AZ489FT7036), accessed at https://fjallfoss.fcc.gov/prod/oet/forms/blobs/retrieve.cgi?attachment_id=1289062&native_or_pdf=pdf (“Harrington E-Mail”); *Virginia Order*, at ¶7.

⁹ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, Order, FCC 09-8 (rel. Feb. 12, 2009) (“*Stay Order*”).

¹⁰ Such unfulfilled assumptions included that Auction 73 would yield a national D Block licensee and that the Network Sharing Agreement (NSA) would be successfully negotiated and approved with sufficient time to effect the narrowband relocations prior to February 17, 2009.

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II. **The Current Situation and the Significant Problems Presented With Respect to Interoperability**

As a result of the above proceedings, equipment manufacturers are not currently permitted to obtain Part 90 public safety equipment authorizations which certify use of 775-776 MHz/805-806 MHz.¹¹ In addition, the Waiver Licensees are currently not permitted to order or acquire new equipment for public safety operation on 775-776 MHz/805-806 MHz; rather for public safety operation on such frequencies they are limited to the use of legacy equipment ordered or on hand as of August 30, 2007.¹² Thus, the Commission's 700 MHz rebanding efforts described above have resulted in an unintended, unanticipated and untenable situation where although the Waiver Licensees have been permitted to temporarily continue operation on 775-776 MHz/805-806 MHz, these operators are prohibited from acquiring and deploying more effective, efficient and appropriate multi-band equipment on 775-776 MHz/805-806 MHz during their waiver periods, which threatens to significantly and negatively impact the achievement of public safety interoperability in the near term, and the sustainability of such interoperability for years to come. More specifically, the following significant technical, operational and financial problems exist as a result of the current situation:

A. **Technical and Operational Issues**

Achievement of effective and efficient local, regional and nationwide interoperability of public safety communications systems necessarily requires a solution involving multi-band and multi-user coordination and utilization.¹³ Notwithstanding this, the 775-776 MHz/805-806 MHz

¹¹ See Harrington E-Mail; *Virginia Order*, at ¶7.

¹² Any manufacturer that has marketed or sold equipment for operation on 775-776 MHz/805-806 MHz for public safety operations would be in violation of the FCC's rules and subject to investigation and enforcement action by the FCC.

¹³ The Department of Homeland Security explains "The advent of two-way radio communications in the early 1930s generated a need for public safety radio channels, or spectrum. To support emergency response radio communications, the Federal Communications Commission reserved radio spectrum within several different frequency bands for public safety use. Until recently, emergency response radios were built to operate within a single radio band. As a result, emergency response agencies and support units—such as the Federal Emergency Management Agency, the National Guard, and the United States Coast Guard—had to rely on the use of several single-band portable or mobile radios to maintain a level of interoperability with partner agencies. While some agencies swapped or shared radios, others employed time-consuming methods to exchange information, including relaying messages through dispatchers or using runners to hand-carry messages. To address these challenges, [DHS awarded a contract to Thales] to demonstrate a multi-band radio (MBR) that enables emergency responders to communicate with partner agencies—regardless of the radio band. This capability represents a significant step for Federal agencies that need to interoperate with their local, tribal, regional, and state counterparts." "Multi-Band Radio Project", Department of Homeland Security, accessed at: <http://www.safecomprogram.gov/NR/rdonlyres/F8329141-4FD5-4053-97C1-6DD3E2B413ED/0/MBRFactSheet1.pdf>.

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equipment permitted to be used under the Waiver Orders is limited to only reported equipment that had already been received by the Waiver Licensees as of August 30, 2007 or that "was already on order and planned for deployment" as of that date.¹⁴ While such legacy equipment is able to be operated on 775-776 MHz/805-806 MHz on an interim basis, it is single band capable only, and simply does not afford the Waiver Licensees the tremendous benefits of multi-band radio technology that has been developed and authorized by the FCC since the *Second Report and Order*. This significant limitation prevents the efficient and effective deployment of truly interoperable and sustainable public safety communications networks, in contravention of Commission policy.

Under the currently required single band approach, the various user groups in the Waiver Licensees' systems are each forced to employ a specific band with interoperability limited to audio switch boxes with limited range, cumbersome network patches or the requirement to carry up to 4 different radios.¹⁵ This approach significantly undermines the ability of the Waiver Licensees to develop and implement effective and efficient interoperable public safety systems. On the other hand, multi-band radios - with the capability of operating across all of the public safety bands (i.e., 136-174 MHz, 380-520 MHz, 700 MHz, and 800 MHz) - would afford the Waiver Licensees a number of critical benefits not currently available under the existing policy:

- **Flexible Deployment.** Multi-band radios can serve a single incident commander, a group of agency commanders, all squad leaders in an agency, or every team member, as required. This means that interoperability improvements can be delivered across a broad cross-section of agencies from the smallest rural agency to large urban systems. One root cause of interoperability problems is the governance issues that block cooperation between agencies. Multi-band radio solutions reduce these issues because it does not force existing infrastructure owners to change their system to accommodate others. In this regard, first responders often work as part of multi-agency task forces with Federal, State, Local, and Tribal entities. The multi-band radio can be utilized to access both local infrastructure and Federal nets for enhanced interoperability. Finally, new multi-band radios cover 380 to 400 MHz and create links to the National Guard on this newly defined band.
- **Mutual Aid Channels.** A well-defined set of mutual aid channels, now with proposed common nomenclature, exist nationwide for Public Safety/Federal

¹⁴ See Harrington E-Mail; *Virginia Order*, at ¶7.

¹⁵ For example, in Illinois (subject to a Waiver Order dated July 18, 2008; DA 08-1696), the desired system requires task force interoperability between users on the state-wide 700/800 MHz network with legacy users operating in the 136-174MHz VHF and 450-470 UHF frequency bands, as well as Federal agencies in the VHF frequency bands. Under the rules and policies currently applicable to the Waiver Orders, this agency must carry up to 3-4 different radios to communicate with the other agencies on the mission.

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communications interoperability. The multi-band radio can host these channels in all of the major bands for the maximum set of mutual aid links to other agencies.

- **Frequency Coordination.** Rapid frequency coordination is essential for crisis management. A choice of multiple bands facilitates frequency coordination and authorization for new users and applications because all bands are available.
- **Spectrum Utilization.** Multi-band radios offer maximum spectrum utilization and unprecedented efficiency allowing unified operation on a variety of frequency bands. In addition to permitting operation in the 700 MHz band, multi-band radios allow users who have moved to 800 MHz systems, but have kept older VHF and UHF conventional frequencies for back-up, to access all of these bands for additional talk paths. In addition, Federal users who have been frustrated with congested VHF spectrum crowding have the capability of using the 402 to 420 MHz band in a single portable radio. In addition, the new multi-band radios are now capable of future upgrade to the 6.25 kHz equivalent bandwidth specified by the Commission for future implementation,¹⁶ and defined by the Project 25 Phase II suite of standards. This new technology will ease spectrum crowding and offer more talk paths in the existing channel grants and allocations held by Public Safety.
- **Range Expansion.** Many new 700/800 MHz trunking systems have stranded some local jurisdictions "outside the net" if they are unwilling to join the system, or are on the geographic fringe and not covered, or need time to develop funding. Multi-band radios allow these outside jurisdictions to have access to the regional P25 trunking system while continuing to operate on their old conventional legacy systems during transition. Trunking users on the P25 700/800 MHz system have access to talk to outside agencies on legacy channels in different bands using the same SDR portable that they use in their day-to-day operations.

The Thales Liberty™ Radio, authorized by the Commission as of April 21, 2009,¹⁷ is the first multi-band, software-defined land mobile radio for government agencies and first responders. With coverage across all of the public safety bands (136-174 MHz, 380-520 MHz, 700 MHz, and 800 MHz), Federal, State and Local agencies (including the Waiver Licensees)

¹⁶ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, WT Docket No. 99-87; RM-9332, *Fourth Memorandum Opinion and Order*, 23 FCC Rcd. 8042, ¶8 (2008) ("12.5 kHz technology is a transitional step in the eventual migration of PLMR systems to 6.25 kHz technology...[W]hen 6.25 kHz technology matures to the point that sufficient equipment is available for testing, we will expeditiously establish a transition date for users to convert to that more spectrum-efficient technology.").

¹⁷ FCC ID: OKC-4102023501.

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can for the first time communicate using a single portable radio that operates in direct mode or uses existing infrastructure in any of the bands. Yet, as explained above, in the existing situation the Waiver Licensees are not permitted to purchase the Thales Liberty™ Radio for operations on 775-776 MHz and 805-806 MHz, and as a result this technology is effectively unavailable to the Waiver Licensees during their waiver periods. Because the Thales Liberty™ Radio is currently unavailable to the Waiver Licensees for 775-776 MHz/805-806 MHz operations, these public safety communications systems are being constructed and deployed for the long-term (even after the Waiver Orders expire) without the substantial and necessary benefits of multi-band technology. Should the Commission grant the relief request herein, the above-described technical and operational benefits of effective and efficient interoperable public safety systems can be realized.

B. Financial Issues

Prohibiting the Waiver Licensees from using multi-band radios for operation on 775-776 MHz/805-806 MHz during their waiver periods, and for operation on currently authorized frequencies thereafter, also has significant financial impacts relevant to interoperability, as follows:

- As explained above, the flexibility of multi-band radios allows interoperability across a broad cross-section of agencies, from the smallest rural agency to large urban systems. Numerous surveys cite that the majority of first responders are smaller agencies often in rural areas with limited budgets.¹⁸ The prospect of a \$150 million regional multi-band trunking system is not a viable solution for such smaller entities. Multi-band radios offer a cost-effective solution that works on current infrastructures, yet have the added capability to link to other bands and infrastructure required for incidents in their own area, or other regions. Sharing access to newly evolving P25 State-wide and region-wide networks can be cost-effective for smaller rural agencies. Many smaller agencies in rural areas still rely on a patchwork of different bands to accomplish their mission. This is especially true when they roam beyond their jurisdictional limits to other towns or counties. Police may be on VHF with Fire and EMS on UHF. Multi-band radios offer a single subscriber unit with direct connection to all Public Safety bands for maximum interoperability and extended coverage.
- The Department of Homeland Security has made available substantial grant funding to help agencies with interoperability issues. Yet, not unexpectedly such funding must be utilized within specified timeframes. Unfortunately, the current substantial limitations placed on the type of equipment that Waiver Licensees can

¹⁸ See generally, "State and Local Law Enforcement Wireless Communications and Interoperability": A Quantitative Analysis," National Institute of Justice, U.S. Department of Justice (Jan. 1998).

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operate on 775-776 MHz/805-806 MHz during their waiver periods will effectively prevent these systems from the ability to utilize this grant money to purchase the more efficient new multi-band technology with the above-described benefits.

- Because cost reimbursement issues for the Waiver Licensees with respect to operations deployed after August 30, 2007 are in limbo, and due to the fact that the 700 MHz D Block auction (which is to serve as the source for relocation reimbursement) has not yet been conducted, preventing Waiver Licensees from acquiring and deploying more cost-efficient multi-band equipment presents an undue, significant financial burden on the Waiver Licensees.

Thus, unless the Commission grants the relief requested herein, the Waiver Licensees will not be allowed the critical opportunity to ensure scalability in deployment via multi-band radios, which in turn will prevent the Waiver Licensees from financially responsible deployment, taking into account the levels of external grants and internal budgets, and the timing in which such funding must be utilized.

III. Waiver Request

Waiver of Sections 2.106 and 90.531(b), and any other relief as may be necessary and proper, is requested to:

- Permit the temporary extension of the authorized Part 90 frequencies specified on the Thales Equipment Authorization to include 775-776 MHz and 805-806 MHz.
- Permit the Thales Liberty™ Radio (with the extended and authorized 775-776 MHz and 805-806 MHz frequencies) to be marketed to and purchased by all Waiver Licensees, for the limited duration of their waivers.
- Permit the Waiver Licensees to use the Thales Liberty™ Radio on 775-776 MHz/805-806 MHz for the limited duration of their waivers, after which operation of the Thales Liberty™ Radio would be limited to those frequencies currently authorized by the Commission.

Section 1.925 of the Commission's Rules provides that a waiver may be granted if it is shown that either: (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (b) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has

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no reasonable alternative.¹⁹ Under all of these standards, the requested waiver is appropriate, as discussed below.

A. The Policies Underlying the Commission's Actions

To determine whether waiver is appropriate, identification of the policies underlying the relevant Commission actions (the "Commission Policies") is necessary:

- Action: Adoption of the *Second Report and Order* and the associated rebanding of Public safety 700 MHz spectrum:
- Policy:
- Promotion of commercial access to 700 MHz Band spectrum.
 - Promotion of the development of a nationwide interoperable broadband network for public safety users.
 - To respond to "the continuing technological advances in the market for wireless services, and the rapidly increasing need of public safety users for broadband communications."²⁰
- Action: Reconfiguration of the lower portion of the commercial Guard Band B Block at 775-776 MHz and 805-806 MHz:
- Policy: "To provide a necessary guard band between public safety narrowband communications and adjacent commercial services."²¹
- Action: Prohibition of new narrowband operations outside of the consolidated narrowband blocks (e.g., at 775-776 MHz and 805-806 MHz):
- Policy: "[T]o ensure that the relocation proceeds in an orderly manner and without complications stemming from additional operations being deployed in spectrum being reallocated."²²
- Action: Waivers permitting the Waiver Licensees to operate temporarily on 775-776 MHz and 805-806 MHz:
- Policy:
- To address potential public harm that could result if the ability of the Waiver Licensees to respond to public safety emergency was compromised.
 - To avoid creating hardship or delaying the deployment of systems "needed to protect the safety of life and property."
 - To ensure that such waivers are issued only to licensees who are able to demonstrate evidence of a comprehensive 700 MHz deployment plan that

¹⁹ 47 CFR §1.925.

²⁰ *Second Report and Order*, at ¶3.

²¹ *Id.* at ¶¶99, 125.

²² *Id.* at ¶339.

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predates August 30, 2007 for which equipment has been received or deployed.²³

Action: Extension of February 17, 2009 narrowband relocation deadline.
Policy: To recognize and accommodate the unanticipated change in circumstances and delays caused by the non-occurrence of the D Block auction, which prevented the finalization of an NSA and the timely completion of narrowband relocations.²⁴

B. The Unique and Unusual Factual Circumstances

The 700 MHz public safety rebanding effort has been beset by numerous unanticipated material delays and obstacles, all of which to date have been addressed through reasoned and flexible Commission action. Expedited action by the Commission to grant the relief requested in this waiver would be entirely consistent with its prior actions taken in response to these unique and unusual circumstances. The initial restrictions on public safety use and acquisition of 775-776 MHz and 805-806 MHz equipment as of August 30, 2007 were predicated on the timely completion of the narrowband relocation scheme set forth in the *Second Report and Order*, and the resulting anticipated need to provide a guard band between public safety narrowband communications and adjacent commercial services.²⁵ Unfortunately, the implementation of that scheme has been anything but timely and complete, due to the following unique and unusual circumstances:

- Auction 73 failed to yield a national D Block licensee.
- The NSA has not been negotiated as there is no D Block license.
- The February 17, 2009 narrowband relocation deadline was extended because the "predicate assumptions for establishing [the deadline] have not materialized",²⁶ and specification of a revised deadline remains pending.
- The funding source for reimbursement of costs for consolidating the 700 MHz public safety narrowband channels to the upper half of the 700 MHz Public Safety Band, namely, the Upper 700 MHz Band D Block licensee, does not yet exist.

²³ See *Phoenix, Arizona Waiver Order*, at ¶7; *Virginia Order*, at ¶7.

²⁴ See *Stay Order*, at ¶3.

²⁵ *Second Report and Order*, at ¶¶99, 125.

²⁶ See *Stay Order*, at ¶4.

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- The need for completely prohibiting public safety operations on 775-776 MHz and 805-806 MHz (to provide a guard band between public safety narrowband systems and adjacent commercial operations) does not yet exist, as recognized by the issuance of the Waiver Orders to the Waiver Licensees.
- The Waiver Licensees require interim continued use of 775-776 MHz and 805-806 MHz, yet the duration of the waivers granted to the Waiver Licensees is not certain.
- The Waiver Licensees require interim continued use of 775-776 MHz and 805-806 MHz, yet the reimbursement issues related to the interim use of such frequencies are not settled, and the Commission's current restrictions may prevent the Waiver Licensees from timely utilizing DHS grant funding for more efficient and effective multi-band technology.
- The Waiver Licensees require interim continued use of 775-776 MHz and 805-806 MHz and are currently required to use equipment on order or on hand as of August 30, 2007, yet multi-band radio technology now presents a unique opportunity to develop, implement and sustain public safety communications systems with substantially greater chances for successful and efficient interoperability, with significant cost advantages.

C. The Public Interest and Consistency with the Commission's Policies

The requested relief provides substantial technical, operational and financial public interest benefits vis-à-vis public safety and interoperability

Allowing the Thales Liberty™ Radio (with extended and authorized 775-776 MHz and 805-806 MHz frequencies) to be marketed to and purchased by all Waiver Licensees, for the limited duration of such waivers, and permitting the Waiver Licensees to use the Thales Liberty™ Radio on 775-776 MHz/805-806 MHz for the limited duration of their waivers, after which operation of the Thales Liberty™ Radio would be limited to those frequencies currently authorized by the Commission, is in the public interest because of the substantial technical, operational and financial benefits that can be made available to the Waiver Licensees (and therefore the general public) vis-à-vis public safety interoperability, now and for the long-term. The technical and operational benefits (Flexible Deployment, Mutual Aid Channels, Frequency Coordination, Spectrum Utilization, Range Expansion.), and the financial benefits of this technology, discussed in greater detail at pages 4-6, *supra.*, are incorporated herein by reference.

The requested relief is entirely consistent with the Commission's Policies

Because grant of the requested relief would make the technical, operational and financial benefits of multi-band radio technology immediately available to the Waiver Licensees for

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inclusion in their systems, and thereafter on a long-term basis even after the waiver periods end, such result would (i) more effectively promote the near- and long-term development of a nationwide interoperable broadband network for public safety users; (ii) more successfully respond to “the continuing technological advances in the market for wireless services, and the rapidly increasing need of public safety users for broadband communications”²⁷; (iii) more directly and effectively address the ability of the Waiver Licensees to “protect the safety of life and property” and avoid the “potential public harm” that could result if the ability of the Waiver Licensees to respond to public safety emergency was compromised.²⁸ In addition, granting this relief is entirely consistent with prior Commission action in this proceeding to “timely and appropriately recognize and accommodate the unanticipated change in circumstances and delays” that have occurred with respect to 700 MHz public safety deployment.²⁹

The requested relief will not undermine or negatively impact the Commission’s Policies

Because this request seeks to allow the Waiver Licensees to use the Thales Liberty™ Radio on 775-776 MHz/805-806 MHz only for the limited duration of their waivers, after which operation of the Thales Liberty™ Radio would be limited to those frequencies currently authorized by the Commission, such relief will not undermine or negatively impact (i) the promotion of commercial access to 700 MHz Band spectrum;³⁰ (ii) the ability to “ensure that the relocation proceeds in an orderly manner”;³¹ (iii) the ability of the 775-776 MHz/805-806 MHz bands to “provide a necessary guard band between public safety narrowband communications and adjacent commercial services” once the relocation has been accomplished;³² nor (iv) Commission assurance that the Waiver Licensees must demonstrate a comprehensive 700 MHz deployment plan that predates August 30, 2007 before obtaining a waiver in the first instance.

Not granting the relief requested in this waiver request would be inequitable, unduly burdensome, inconsistent with the Commission’s policies and contrary to the public interest

The unique and unusual factual circumstances underlying the 700 MHz public safety rebanding effort, discussed at page 9, *supra.*, and the substantial technological developments with respect to multi-band radio technology since August 30, 2007, present the Commission with a brief yet critical window of opportunity to ensure the highest possibility of success for 700

²⁷ *Second Report and Order*, at ¶3.

²⁸ *See Phoenix, Arizona Waiver Order*, at ¶7; *Virginia Order*, at ¶7.

²⁹ *See Stay Order*, at ¶3.

³⁰ *Second Report and Order*, at ¶3.

³¹ *Id.* at ¶339.

³² *Id.* at ¶¶99, 125.

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MHz public safety deployment. Should the Commission choose to not act now to provide the Waiver Licensees with the flexibility and technology to substantially upgrade their ability to achieve long-term, sustainable public safety interoperability, such decision would be wholly inconsistent with the Commission's Policies (see above). In addition, failure to grant the requested relief would be unduly burdensome to the Waiver Licensees, who have been provided with the interim flexibility to operate on 775-776 MHz/805-806 MHz, but who do not have access to the best available equipment for operation on those frequencies during their waiver periods, and thereafter on currently authorized frequencies.

Failure to grant the relief requested herein would also be inequitable in that the Commission would be effectively and unreasonably establishing a competitive market barrier against the authorization, acquisition and use of new equipment that is perfectly appropriate and suitable for immediate deployment into the 700 MHz public safety systems of the Waiver Licensees. In this regard, just recently, and in response to the concerns of Congress, the Commission acknowledged the serious problems with respect to the competition issues in the area of public safety manufacturing:

"Our Nation's first responders rely on communications systems supplied by a small number of equipment providers to support mission-critical communications. The characteristics of how public safety equipment is developed and provided may impact the interoperability and efficiency of communications between first responders, which could potentially threaten lives and property. *Because of the important role these communications systems play in supporting our Nation's public safety personnel, it is imperative that we explore all potential barriers to achieving nationwide interoperability for both broadband and narrowband communications, and determine what, if any, actions the Commission should take in this area.* As the Commission considers requirements for the 700 MHz broadband public safety network, are there any requirements on public safety equipment or network operators that would increase competition in the provision of public safety equipment."³³ (emphasis added)

As of August 30, 2007, the Waiver Licensees have not been permitted to order or purchase new equipment for operation on 775-776 MHz/805-806 MHz even though they have been granted waivers to operate on such frequencies on an interim basis. As such, the current situation effectively endorses the development of the Waiver Licensees' public safety systems with technology that is truly "frozen in time", and wholly rejects the substantial benefits of years of development by private sector manufacturers such as Thales. The requested relief is warranted on an immediate basis because both Thales and the Waiver Licensees have "no

³³ Public Safety and Homeland Security Bureau Seeks Comment on Increasing Public Safety Interoperability by Promoting Competition For Public Safety Communications Technologies, PS Docket No. 10-168, *Public Notice*, DA 10-1556 (rel. Aug. 19, 2010).

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alternative” with respect to the ability to deploy multi-band technology on 775-776 MHz/805-806 MHz during the waiver periods. Let this be the first action taken by the Commission in response to Congress’ concerns, an action which will ultimately protect the life and safety of thousands.

Because grant of the requested relief would be consistent with the public interest and there is no reasonable countervailing public interest in denying this very limited waiver, Thales respectfully requests that this request be granted.

IV. Expedited Action Requested

As described above, there are numerous reasons for granting the requested relief on an expedited basis:

- The technical, operational and financial benefits of the multi-band radio technology available via the Thales Liberty™ Radio can provide instant public safety benefits, save lives, and more effectively promote nationwide interoperability than existing technology.
- The Waiver Orders are effective only on an interim basis, and the duration of such waivers has not yet been determined.
- Allowing the Waiver Licensees to acquire and use the multi-band radio technology available via the Thales Liberty™ Radio will allow a more efficient utilization of federal grant funding for 700 MHz public safety systems, which funding is available only within a limited timeframe.

V. Conclusion

For the foregoing reasons, Thales respectfully requests that the Commission grant expedited waiver of Sections 2.106 and 90.531(b), and any other relief as may be necessary and proper, to:

- Permit the temporary extension of the authorized Part 90 frequencies specified on the Thales Equipment Authorization to include 775-776 MHz and 805-806 MHz.³⁴

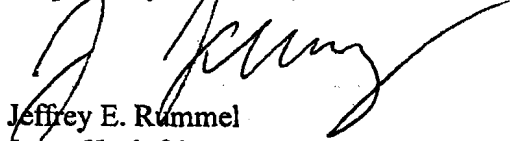
³⁴ Extension of the Thales Equipment Authorization to include 775-776 MHz and 805-806 MHz as a result of waiver is consistent with Commission policy – See OET KDB Publication Number 634817 D01 Freq Range Listing for Grants v02r01.

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- Permit the Thales Liberty™ Radio (with the extended and authorized 775-776 MHz and 805-806 MHz frequencies) to be marketed to and purchased by all Waiver Licensees, for the limited duration of their waivers.
- Permit the Waiver Licensees to use the Thales Liberty™ Radio on 775-776 MHz/805-806 MHz for the limited duration of their waivers, after which operation of the Thales Liberty™ Radio would be limited to those frequencies currently authorized by the Commission.

If you have any questions concerning this request, please contact the undersigned.

Respectfully submitted,



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Jason Koslofsky
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cc: Jennifer Manner, Deputy Chief, Public Safety and Homeland Security Bureau
Joe Dichoso, Chief, Equipment Authorization Branch, OET